



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: NOVEMBER 07, 2022

IN THE MATTER OF:

Appeal Board No. 624805

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective December 14, 2020 through December 20, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed June 29, 2022 (A.L.J. Case No. ), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant filed a claim for unemployment benefits on March 18, 2020; her claim was made effective March 9, 2020. Thereafter, she certified weekly for benefits online. The claimant knew that she had to certify weekly to get unemployment benefits.

The claimant certified for benefits as usual for the week ending December 20, 2020. She did not notice anything different or usual about her certification. She does not specifically recall whether she received confirmation saying her certification was successful or finalized for the week ending December 20, 2020 or any other week when she certified.

The claimant noticed that despite certifying as usual, she did not receive benefits for the week ending December 20, 2020. The claimant concluded that something had gone wrong with her certification, and attempted to call the Department of Labor to find out what happened, and to advise that she had certified but had not received benefits. The claimant was unsuccessful in reaching the Department by phone, so on January 3, 2021, the claimant sent a message through the Department of Labor's Secure Message Center, requesting benefits for the week ending December 20, 2020, when her weekly benefit claim "did not go through." In the message, the claimant provided responses to the certification questions regarding whether she had worked, received vacation or holiday pay, had refused any offers of employment, or had returned to work. The claimant stated in the message that she claimed unemployment benefits for that week but her "internet signal must have been weak and it did not go through."

The claimant received no response to her message from the Department of Labor. The claimant waited a few months for a response before she started to call again to inquire about her certification for the week ending December 20, 2020.

**OPINION:** The credible evidence establishes that the claimant certified for benefits online for the week ending December 20, 2020, but that for a reason that has not been established, her certification was not successful. The evidence establishes further that as soon as the claimant realized she had not received benefits for that week, and surmised that something must have gone wrong with her certification, she contacted the Department of Labor to inform them of what had happened.

It is significant that the claimant produced a copy of the January 3, 2021 secure message she sent to the Department prior to the hearing, and that she accessed that same message through her online account during the hearing, when the Commissioner of Labor representative questioned her credibility and the authenticity of the message. The screen shot of the claimant's account in the Secure Message Center establishes that the message was sent by the claimant to the Department on January 3, 2021. Thus, the credible and consistent testimony and documentary evidence establishes that the claimant certified for the week ending December 20, 2020, and as soon as she realized that something had gone wrong with that certification, she contacted the Department to remedy the matter.

We are not persuaded that the Call History Report or the WebClaim Scorecard produced by the Commissioner's representative at the hearing, establish that the claimant did not certify. Not only is the claimant's consistent and credible testimony given greater weight than any hearsay document to the contrary, but we find it immaterial that the records produced may indicate that there were no problems with the system on December 20, 2020, or that the call history report shows no calls from the claimant in December 2020. First, there could be a number of reasons other than problems with the Department's system that interfered with the claimant's successful certification. As the evidence suggests, issues with the Internet in general might have prevented the certification from being successfully completed. Further, whether or not the claimant called after her failed certification, the consistent and credible evidence establishes that she notified the Department of Labor immediately after she realized there must have been a problem. That prompt notification, and the claimant's credible testimony, support a finding that the claimant did certify for benefits for the week ending December 20, 2020, although the certification did not register in the online system.

Accordingly, we find that the claimant is eligible to receive benefits for the period at issue, from December 14, 2020 through December 20, 2020.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, holding the claimant ineligible to receive benefits, effective December 14, 2020 through December 20, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER